

Robert F. McCauley (SBN 162056)
 robert.mccauley@finnegan.com
 FINNEGAN, HENDERSON, FARABOW,
 GARRETT & DUNNER, LLP
 3300 Hillview Avenue
 Palo Alto, CA 94304-1203
 Telephone: (650) 849-6600
 Facsimile: (650) 849-6666

Gerald F. Ivey (*pro hac vice*)
 Smith R. Brittingham IV (*pro hac vice*)
 Elizabeth A. Niemeyer (*pro hac vice*)
 John M. Williamson (*pro hac vice*)
 Rajeev Gupta (*pro hac vice*)
 Cecilia Sanabria (*pro hac vice*)
 Aidan C. Skoyles (*pro hac vice*)
 FINNEGAN, HENDERSON, FARABOW,
 GARRETT & DUNNER, LLP
 901 New York Avenue, NW
 Washington, DC 20001-4413
 Telephone: (202) 408-4000
 Facsimile: (202) 408-4400

Stephen E. Kabakoff (*pro hac vice*)
 FINNEGAN, HENDERSON, FARABOW,
 GARRETT & DUNNER, LLP
 3500 SunTrust Plaza
 303 Peachtree Street, N.E.
 Atlanta, GA 30308-3263
 Telephone: (404) 653- 6400
 Facsimile: (404) 653-6444

Attorneys for Plaintiffs
 OpenTV, Inc., NagraVision S.A., and Nagra
 France S.A.S.

George A. Riley (S.B. #118304)
 griley@omm.com
 Luann L. Simmons (S.B. #203526)
 lsimmons@omm.com
 Melody Drummond Hansen (S.B. #278786)
 mdrummondhansen@omm.com
 O'MELVENY & MYERS LLP
 Two Embarcadero Center, 28th Floor
 San Francisco, California 94111-3823
 Telephone: (415) 984-8700
 Facsimile: (415) 984-8701

Ryan K. Yagura (S.B. #197619)
 ryagura@omm.com
 Xin-Yi Zhou (S.B. #251969)
 vzhou@omm.com
 Kevin Murray (S.B. #275186)
 kmurray2@omm.com
 O'MELVENY & MYERS LLP
 400 South Hope Street
 Los Angeles, California 90071-2899
 Telephone: (213) 430-6000
 Facsimile: (213) 430-6407

Attorneys for Defendant
 APPLE INC.

**UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA
 SAN JOSE DIVISION**

OPENTV, INC., NAGRAVISION S.A., and
 NAGRA FRANCE S.A.S.

Plaintiffs,

v.

APPLE INC.,

Defendant.

CASE NO. 5:15-cv-02008-EJD (NMC)

**STIPULATION RE: DISCOVERY OF
 ELECTRONICALLY STORED
 INFORMATION FOR PATENT
 LITIGATION; [PROPOSED] ORDER**

1 Plaintiffs OpenTV, Inc., NagraVision S.A., and Nagra France S.A.S. (“Plaintiffs”) and
 2 Defendant Apple Inc. (“Apple”) hereby stipulate to the following provisions for the production of
 3 Electronically Stored Information (“ESI”), and respectfully request that the Court enter the proposed
 4 order below regarding same:

5 The Court ORDERS as follows:

6 1. This order supplements all other discovery rules and orders. It streamlines Electronically
 7 Stored Information (“ESI”) production to promote a “just, speedy, and inexpensive determination”
 8 of this action, as required by Federal Rule of Civil Procedure 1.

9 2. This order may be modified in the court’s discretion or by agreement of the parties. The
 10 parties shall jointly submit any proposed modifications within 30 days after the Federal Rule of Civil
 11 Procedure 16 conference. If the parties cannot resolve their disagreements regarding these
 12 modifications, the parties shall submit their competing proposals and a summary of their dispute.

13 3. As in all cases, costs may be shifted for disproportionate ESI production requests pursuant
 14 to Federal Rule of Civil Procedure 26. Likewise, a party’s nonresponsive or dilatory discovery
 15 tactics are cost-shifting considerations.

16 4. A party’s meaningful compliance with this order and efforts to promote efficiency and
 17 reduce costs will be considered in cost-shifting determinations.

18 5. Absent agreement of the parties or further order of this court, the following parameters
 19 shall apply to ESI production:

20 A. **General Document Image Format.** Each electronic document shall be produced in full-text
 21 searchable format (PDFs or single-page Tagged Image File Format (“TIFF”) images) with
 22 unitizing load files. If a document is more than one page, the unitization of the document and
 23 any attachments and/or affixed notes shall be maintained as they existed in the original
 24 document. The parties agree to make reasonable efforts to suppress duplicates and near
 25 duplicates.

26 B. **Footer.** Each document image shall contain a footer with a sequentially ascending
 27 production number.
 28

C. **Native Files.** To the extent a party that receives a document produced in a format specified above believes, on a case-by-case basis, that the document should be produced in an alternative format, the parties agree to meet and confer in good faith concerning such alternative production arrangements. For the avoidance of doubt, it shall be deemed objectionable for a party to request that (1) substantially all documents of a particular type (e.g., spreadsheets), except source code, be produced in native format, and (2) production of native files take place at a time that disrupts other discovery activities (e.g., a deposition) without good cause. For the further avoidance of doubt, requesting the production of a document in its native format shall be deemed not to be disruptive of other discovery activities if the underlying document was produced near the date of said discovery activities.

D. **No Backup Restoration Required.** Absent a showing of good cause, no party need restore any form of media upon which backup data is maintained in a party's normal or allowed processes, including but not limited to backup tapes, disks, SAN, and other forms.

E. **Voicemail and Mobile Devices.** Absent a showing of good cause, voicemails, PDAs, and mobile phones are deemed not reasonably accessible and need not be collected and preserved.

6. General ESI production requests under Federal Rules of Civil Procedure 34 and 45, or compliance with a mandatory disclosure order of this court, shall not include e-mail or other forms of electronic correspondence (collectively "e-mail"). To obtain e-mail parties must propound specific e-mail production requests.

7. Email production requests shall only be propounded for specific issues, rather than general discovery of a product or business.

8. E-mail production requests shall be phased to occur timely after the parties have exchanged initial disclosures, a specific listing of likely e-mail custodians, a specific identification of the fifteen most significant listed e-mail custodians in view of the pleaded claims and defenses,¹ infringement

¹ A "specific identification" requires a short description of why the custodian is believed to be significant.

1 contentions and accompanying documents pursuant to P.L.R. 3-1 and 3-2, invalidity contentions and
2 accompanying documents pursuant to P.L.R. 3-3 and 3-4, and preliminary information relevant to
3 damages. The exchange of this information shall occur at the time required under the Federal Rules
4 of Civil Procedure, Local Rules, or by order of the court.

5 9. E-mail production requests shall identify the custodian, search terms, and time frame. The
6 parties shall cooperate to identify the proper custodians, proper search terms, and proper time frame.
7 Each requesting party shall limit its e-mail production requests to a total of four custodians per
8 patent per producing party for all such requests. The parties may jointly agree to modify this limit
9 without the court's leave. The court shall consider contested requests for additional or fewer
10 custodians per producing party, upon showing a distinct need based on the size, complexity, and
11 issues of this specific case. Cost-shifting may be considered as part of any such request.

12 10. Each requesting party shall limit its e-mail production requests to a total of eight search
13 terms per custodian per party. The parties may jointly agree to modify this limit without the court's
14 leave. The court shall consider contested requests for additional or fewer search terms per custodian,
15 upon showing a distinct need based on the size, complexity, and issues of this specific case. The
16 parties agree to confer on a process to test the efficacy of the search terms. The search terms shall be
17 narrowly tailored to particular issues. Indiscriminate terms, such as the producing company's name
18 or its product name, are inappropriate unless combined with narrowing search criteria that
19 sufficiently reduce the risk of overproduction. A conjunctive combination of multiple words or
20 phrases (e.g., "computer" and "system") narrows the search and shall count as a single search term.
21 A disjunctive combination of multiple words or phrases (e.g., "computer" or "system") broadens the
22 search, and thus each word or phrase shall count as a separate search term unless they are variants of
23 the same word. Use of narrowing search criteria (e.g., "and," "but not," "w/x") is encouraged to limit
24 the production and shall be considered when determining whether to shift costs for disproportionate
25 discovery. Should a party serve email production requests with search terms beyond the limits
26 agreed to by the parties or granted by the Court pursuant to this paragraph, this shall be considered in
27 determining whether any party shall bear all reasonable costs caused by such additional discovery.

11. Nothing in this Order prevents the parties from agreeing to use technology assisted review and other techniques insofar as their use improves the efficacy of discovery.

12. Pursuant to Federal Rule of Evidence 502(d), the inadvertent production of a privileged or work product protected ESI is not a waiver in the pending case or in any other federal or state proceeding.

13. The mere production of ESI in a litigation as part of a mass production shall not itself constitute a waiver for any purpose.

14. Except as expressly stated, nothing in this order affects the parties' discovery obligations under the Federal or Local Rules.

IT IS SO STIPULATED.

ATTESTATION

I, Elizabeth A. Niemeyer, hereby attest that I have on file all holographic signatures corresponding to any signatures indicated by a conformed signature (/s/) within this e-filed document.

Dated: September 24, 2015

O'MELVENY & MYERS LLP

FINNEGAN, HENDERSON, FARABOW,
GARRETT & DUNNER, LLP

/s/ Luann Simmons
George A. Riley (S.B. #118304)
griley@omm.com
Luann L. Simmons (S.B. #203526)
lsimmons@omm.com
Melody Drummond Hansen (S.B. #278786)
mdrummondhansen@omm.com
O'MELVENY & MYERS LLP
Two Embarcadero Center, 28th Floor
San Francisco, California 94111-3823
Telephone: (415) 984-8700
Facsimile: (415) 984-8701

Ryan K. Yagura (S.B. #197619)
ryagura@omm.com
Xin-Yi Zhou (S.B. #251969)
vzhou@omm.com
Kevin Murray (S.B. #275186)
kmurray2@omm.com
O'MELVENY & MYERS LLP

/s/ E. Niemeyer
Robert F. McCauley (SBN 162056)
robert.mccauley@finnegan.com
FINNEGAN, HENDERSON, FARABOW,
GARRETT & DUNNER, LLP
3300 Hillview Avenue
Palo Alto, CA 94304-1203
Telephone: (650) 849-6600
Facsimile: (650) 849-6666

Gerald F. Ivey (*pro hac vice*)
Smith R. Brittingham IV (*pro hac vice*)
Elizabeth A. Niemeyer (*pro hac vice*)
John M. Williamson (*pro hac vice*)
Rajeev Gupta (*pro hac vice*)
Cecilia Sanabria (*pro hac vice*)
Aidan C. Skoyles (*pro hac vice*)
FINNEGAN, HENDERSON, FARABOW,
GARRETT & DUNNER, LLP
901 New York Avenue, NW

1 400 South Hope Street
Los Angeles, California 90071-2899
2 Telephone: (213) 430-6000
Facsimile: (213) 430-6407

3 Attorneys for Defendant
4 APPLE INC.

Washington, DC 20001-4413
Telephone: (202) 408-4000
Facsimile: (202) 408-4400

Stephen E. Kabakoff (*pro hac vice*)
FINNEGAN, HENDERSON, FARABOW,
GARRETT & DUNNER, LLP
3500 SunTrust Plaza
303 Peachtree Street, N.E.
Atlanta, GA 30308-3263
Telephone: (404) 653- 6400
Facsimile: (404) 653-6444

7 Attorneys for Plaintiffs
8 OpenTV, Inc., NagraVision S.A., and Nagra
9 France S.A.S.

10
11
12 **[PROPOSED] ORDER**

13 **IT IS ORDERED** that the forgoing Stipulation regarding electronic discovery is approved
14 and entered as the Order of the Court.

15
16 Dated:

17 _____
Nathanael M. Cousins
United States Magistrate Judge